

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE,)	
)	
Plaintiff and Respondent,)	
)	S068536
v.)	
)	
RICHARD ALLEN McWHORTER,)	Kern County
)	Super. Ct. No. 65352A
Defendant and Appellant.)	
_____)	

MODIFICATION OF OPINION

THE COURT:

The opinion filed August 6, 2009, and published at 47 Cal.4th 318, is modified as follows:

At page 367, second full paragraph, delete the first sentence and accompanying citations reading, “A trial court’s finding that the *Kelly* foundational requirements have not been met is reviewed for an abuse of discretion. (*People v. Jablonski* (2006) 37 Cal.4th 774, 805; *People v. Venegas* (1998) 18 Cal.4th 47, 93.),” and substitute the following: “As we earlier observed, *Kelly* requires as a foundational matter that the reliability of a new scientific technique be established by a properly qualified expert. Such expert’s qualifications are subject to review for abuse of discretion. (*People v. Ashmus* (1991) 54 Cal.3d, 932, 971.) We conclude on this record that the trial court did not abuse its discretion in excluding Perle’s expert opinion testimony.”

The modification does not affect the judgment.